

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 GRACE E. LA,

12 Plaintiff,

13 vs.

14 ANDRA LEONARD ALLEN and
FOREVER DIAMONDS,

15 Defendants.

CASE NO. 08CV532 WQH (WMc)

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS AS MOOT

16
17 HAYES, Judge:

18 On March 21, 2008, Plaintiff Grace E. La filed the Complaint in this matter against Defendants
19 Andra Leonard Allen and Forever Diamonds. (Doc. # 1). On May 9, 2008, Defendants filed a motion
20 to dismiss for failure to state a claim upon which relief can be granted and for lack of personal
21 jurisdiction. (Doc. # 5). On May 30, 2008, Plaintiff filed a First Amended Complaint. (Doc. # 6).

22 **DISCUSSION & ORDER**

23 FED. R. CIV. P. 15(a) provides in pertinent part that,

24 (1) *Amending as a Matter of Course*. A party may amend its pleading once as a matter
of course:

25 (A) before being served with a responsive pleading; or

26 (B) within 20 days after serving the pleading if a responsive pleading is not
27 allowed and the action is not yet on the trial calendar.

28 In the context of FED. R. CIV. P. 15(a)(1)(A), a motion to dismiss is not a responsive pleading. *See*

1 *Shaver v. Operating Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198, 1201 (9th Cir. 2003);
2 *Morrison v. Mahoney*, 339 F.3d 1042, 1046 (9th Cir. 2005).

3 Plaintiff filed the Complaint in this matter on March 21, 2008, and after that time no Defendant
4 filed a responsive pleading. In light of those facts, the Court finds that Plaintiff had the “absolute
5 right” to file a First Amended Complaint on May 30, 2008. *Shaver*, 332 F.3d at 1201; *see also* (Doc.
6 # 6). The Court concludes that Defendants filed the pending motion to dismiss (Doc. # 5) before
7 Plaintiff filed the First Amended Complaint, and that the motion to dismiss is now moot in light of the
8 First Amended Complaint. Accordingly, Defendants’ motion to dismiss is DENIED as moot and
9 without prejudice.

10 **IT IS SO ORDERED.**

11 DATED: June 17, 2008

12 
13 **WILLIAM Q. HAYES**
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28